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ACTION AF-00

INFO	LOG-00	NP-00	AGRE-00	AID-00	AMAD-00	CIAE-00	COME-00
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	OIC-02	OMB-01	OPIC-01	PA-00	PM-00	PRS-00	ACE-00
	P-00	SP-00	STR-00	USIE-00	BBG-00	R-00	PMB-00
	DSCC-00	PRM-02	DRL-02	G-00	NFAT-00	SAS-00	/010W

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FM AMEMBASSY HARARE
TO SECSTATE WASHDC 7917
INFO NSC WASHDC
DEPT OF TREASURY WASHDC
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 007286

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR GAYLE SMITH
TREASURY FOR OASIA/EBARBER, BHOFFMAN
LONDON FOR CGURNEY
PARIS FOR BISA WILLIAMS
NAIROBI FOR PFLAUMER
PASS USAID FOR AFR/SD - DWELLER, AFR/SA - CPALMA,
NNEWMAN, AA/AFR

USTR FOR ROSA WHITAKER

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E.O. 12958: DECL 12/29/10
TAGS: PHUM PGOV EAGR EAID ZI
SUBJECT: SUPREME COURT RULES ON CFU LAND CASE, DECISION
PROVIDES WIGGLE ROOM TO PRESIDENT MUGABE

CLASSIFIED BY CHARGE D' AFFAIRES EARL M. IRVING FOR
REASONS 1.5 (B/D).

REFS: A. HARARE 6802, B. HARARE 6547, C. HARARE 6330, D.
HARARE 5469, E. HARARE 5337

1. (C) SUMMARY: ON DECEMBER 21 THE SUPREME COURT ISSUED
ITS RULING ON ALL ASPECTS OF THE BROAD LAWSUIT FILED BY
THE COMMERCIAL FARMERS UNION (CFU) AGAINST PRESIDENT
MUGABE AND FIVE MEMBERS OF THE GOVERNMENT OF ZIMBABWE
(GOZ) (REFTEL E). THE SUPREME COURT RULED THAT TWO OF
THE DECLARATIONS (CHARGES) MADE BY THE CFU REGARDING
ACTIONS PRESIDENT MUGABE HAD TAKEN UNDER THE
PRESIDENTIAL POWERS (TEMPORARY MEASURES) ACT HAD BEEN
MADE IRRELEVANT BY PARLIAMENT'S AMENDMENT OF THE LAND
ACQUISITION ACT. THE COURT RULED IN FAVOR OF THE CFU ON
EIGHT OTHER DECLARATIONS. THE COURT SPECIFICALLY
DECLARED AT THE CONCLUSION OF ITS RULING THAT: THE RULE
OF LAW HAS BEEN PERSISTENTLY VIOLATED IN THE COMMERCIAL
FARMING AREAS SINCE FEBRUARY; THAT THE COMMERCIAL
FARMERS AND THEIR FARMWORKERS HAVE BEEN DENIED
PROTECTION OF THE LAW, SUFFERED DISCRIMINATION ON THE
GROUNDS OF THEIR POLITICAL OPINIONS AND PLACES OF
ORIGIN, AND HAD THEIR RIGHTS OF ASSEMBLY AND ASSOCIATION
INFRINGED, ALL IN VIOLATION OF THE CONSTITUTION; THAT A
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PROGRAM OF LAND REFORM AS DEFINED IN THE CONSTITUTION
DOES NOT CURRENTLY EXIST; AND THAT THE AMENDMENT TO THE
LAND ACQUISITION ACT MAKING GOZ NOTICES OF INTENT TO
ACQUIRE LAND VALID INDEFINITELY WAS LEGALLY INVALID
BECAUSE IT CONFLICTED WITH THE CONSTITUTION'S
REQUIREMENT FOR REASONABLE NOTICE. THE SUPREME COURT
RULING ALSO PROVIDES SOMETHING FOR MUGABE, IN THAT IT
MENTIONS THE LEGITIMATE NEED FOR LAND REFORM IN ZIMBABWE
AND GIVES THE GOZ UNTIL JULY 1, 2001 TO DEVELOP A PLAN
THAT WILL MEET THE CRITERIA OF THE CONSTITUTION. AS OF
DECEMBER 29, THERE HAD BEEN NO OFFICIAL COMMENT FROM
PRESIDENT MUGABE OR OTHER GOZ OFFICIALS REGARDING THE
COURT'S RULING. END SUMMARY.

THE COURT SIDES WITH CFU

2. (C) ON RELEASE OF THE COURT'S DECISION ECONOFF SPOKE
WITH THE PRESIDENT OF THE CFU, MR. TIM HENWOOD, AND
LEARNED THAT THE CFU WAS PLEASED WITH THE RULING, AND

RECOGNIZED THAT THE COURT, WHILE RULING ACROSS THE BOARD IN FAVOR OF THE CFU'S DECLARATIONS, HAD DONE SO IN A MANNER THAT LEFT OPEN THE DOOR FOR FACE-SAVING CHANGES IN "FAST-TRACK" BY PRESIDENT MUGABE. HENWOOD LATER ISSUED A STATEMENT HAILING THE COURT'S RULING, BUT ALSO DECLARING HIS "FERVENT HOPE THAT ALL STAKEHOLDERS WILL GRASP THIS JUDGEMENT AS A TIMELY NATION-BUILDING OPPORTUNITY TOWARDS SUSTAINABLE LAND REFORM AND A RETURN TO LAW AND ORDER."

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NO LAND REFORM PLAN AND NO RULE OF LAW

13. (C) THE COURT MADE IT PERFECTLY CLEAR IN ITS RULING THAT THERE IS NO LAND REFORM PLAN OR PROGRAM AS DEFINED IN THE CONSTITUTION AND REQUIRED BY THE LAW. AS THE COURT STATES, "THE FAST TRACK PLAN IS SIMPLY AN 'INTENTION'." THE COURT ALSO CLEARLY STATED THAT THE RULE OF LAW HAS BEEN CONSISTENTLY IGNORED BY THE GOZ SINCE FEBRUARY ON THE COMMERCIAL FARMS, BOTH IN TERMS OF PROTECTING THE FARMERS AND THEIR FARM WORKERS, AND IN TERMS OF THE ACTIONS TAKEN BY THE GOZ AFTER IT BEGAN "FAST-TRACK" IN JUNE. REGARDING THE FARM INVASIONS THAT MUGABE CLAIMS HAVE BEEN THE INDEPENDENT ACTIONS OF FRUSTRATED LANDLESS BLACK ZIMBABWEANS, THE COURT STATES "THEY HAVE BEEN SUPPORTED, ENCOURAGED, TRANSPORTED AND FINANCED BY PARTY OFFICIALS, PUBLIC SERVANTS, THE CIO AND THE ARMY." THE COURT ADDED THAT "COMMON LAW CRIMES HAVE BEEN, AND ARE BEING, COMMITTED WITH IMPUNITY. LAWS MADE BY PARLIAMENT HAVE BEEN FLOUTED BY THE GOVERNMENT. THE ACTIVITIES OF THE PAST NINE MONTHS MUST BE CONDEMNED." THE COURT ADDED THAT THE GOZ ADMITTED TO THE ABSENCE OF THE RULE OF LAW AS PART OF THE SUPREME

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C O N F I D E N T I A L SECTION 02 OF 02 HARARE 007286

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SUBJECT: SUPREME COURT RULES ON CFU LAND CASE, DECISION PROVIDES WIGGLE ROOM TO PRESIDENT MUGABE

COURT CONSENT ORDER OF NOVEMBER 7 (REFTEL C).

THE RULING GIVES WIGGLE ROOM TO MUGABE

14. (C) THE COURT'S RULING INCLUDES A "HISTORICAL" SECTION THAT DETAILS PAST CAUSES OF THE LAND IMBALANCE BETWEEN WHITE AND BLACK ZIMBABWEANS, AND ESPOUSES THE LEGITIMATE NEED TO REDRESS THE IMBALANCE. IN THE CONTEXT OF ALL THE "WICKED THINGS (THAT) HAVE BEEN DONE, AND CONTINUE TO BE DONE" BY THE GOZ IN THE NAME OF LAND REFORM SINCE FEBRUARY, THE COURT STATES "THAT DOES NOT

MEAN THAT WE CAN IGNORE THE IMPERATIVE OF LAND REFORM.
WE CANNOT PUNISH WHAT IS WRONG BY STOPPING WHAT IS
RIGHT." IN TERMS OF ONE OF THE MOST INTRACTABLE ISSUES,
THAT OF WHAT TO DO WITH THE "THOUSANDS OF PEOPLE (THAT)
HAVE BEEN PERMITTED AND ENCOURAGED TO INVADE PROPERTIES
UNLAWFULLY," THE COURT BACKS AWAY FROM THE NOVEMBER
CONSENT ORDER WHICH REQUIRED THEIR IMMEDIATE REMOVAL, BY
STATING "EITHER THEIR PRESENCE MUST BE LEGALIZED, OR
THEY MUST BE REMOVED." PERHAPS THE MOST IMPORTANT
DECISION GIVING PRESIDENT MUGABE SPACE FOR COMPROMISE IS
THAT THE COURT ISSUED AN INTERDICT (INJUNCTION)
PROHIBITING THE GOZ "FROM TAKING ANY FURTHER STEPS IN
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THE ACQUISITION OF LAND FOR RESETTLEMENT," BUT POSTPONED
ITS EFFECT UNTIL JULY 1, 2001 IN ORDER TO ENABLE THE GOZ
TO "PRODUCE A WORKABLE PROGRAMME OF LAND REFORM" AND
"SATISFY THIS COURT THAT THE RULE OF LAW HAS BEEN
RESTORED IN THE COMMERCIAL FARMING AREAS OF ZIMBABWE."

15. (C) COMMENT: IT IS CLEAR THAT THE SUPREME COURT FACED
A TOUGH BALANCING ACT IN HEARING AND DECIDING ON THE
CFU'S BROAD LAWSUIT AGAINST PRESIDENT MUGABE AND THE
GOZ. ON THE ONE HAND THE JUSTICES ABHOR THE BREAKDOWN
OF LAW AND ORDER ON THE COMMERCIAL FARMS, INCLUDING THE
LOSS OF LIFE, THAT MUGABE HAS PROMULGATED SINCE
FEBRUARY. ON THE OTHER HAND, THEY RECOGNIZE THE
LEGITIMATE NEED FOR LAND REFORM AND THE PASSIONS AND
DIVISIONS THAT THIS ISSUE ELICITS AMONG MANY
ZIMBABWEANS. BY CLEARLY RULING IN FAVOR OF THE CFU ON
SPECIFIC LEGAL ISSUES, WHILE ALSO GIVING MUGABE AND THE
GOZ UNTIL JULY OF 2001 TO CLEAN UP THE MESS THEY HAVE
CREATED, THE COURT HAS, IN OUR OPINION, SKILLFULLY
PROVIDED THE SPACE AND TIME THAT COULD ALLOW MUGABE TO
FIND A FACE-SAVING WAY TO DECLARE THAT HE HAS FULFILLED
HIS PROMISE OF LAND REFORM, WHILE AT THE SAME TIME FINDING A
WAY TO RETURN TO THE PRINCIPLES AGREED TO AT THE 1998
DONORS CONFERENCE AND TO THE RULE OF LAW ON THE
COMMERCIAL FARMS. MUGABE HAS NOT RESPONDED DIRECTLY TO
THE RULING, ALTHOUGH IN ANTICIPATION OF ITS OUTCOME THE
GOZ HAS BEEN WORKING ON A PROGRAM THAT, IT CLAIMS,
FOLLOWS THE LAW. THE PLAN IS NOT YET IN THE PUBLIC
DOMAIN AND, AT THIS WRITING, NOT BEING IMPLEMENTED IN
ANY SYSTEMATIC WAY ON THE GROUND. END COMMENT.

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